

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Stainless Broadcasting Co. : CIVIL ACTION
:
v. :
:
Nora L. Guzewicz : No. 96-7305

ORDER - MEMORANDUM

AND NOW, this 30th day of June, 1997, the motion of plaintiff Stainless Broadcasting Company to dismiss defendant Nora L. Guzewicz's counterclaim and strike certain affirmative defenses is granted. Defendant's counterclaims for indemnity and breach of fiduciary duty are dismissed without prejudice. Paragraphs 41, 42, 44 and 45 of defendant's answer are stricken without prejudice to defendant raising these defenses at trial if relevant and otherwise cognizable.¹ Fed. R. Civ. P. 8(c). Following a telephone conference addressing arbitrability of plaintiff's claim, parties

1. The paragraphs are as follows:

41. Plaintiff's Complaint constitutes ongoing vexatious harassment by the Plaintiff against Defendant and her family, minority shareholders of SBC, who oppose numerous ongoing business decisions and judgments being made at SBC which are substantially compromising SBC's overall worth and value.

42. Plaintiff's conduct with regard to the Defendant constitutes ongoing discrimination as will be set forth more fully once the EEOC report and notice are issued.

44. Plaintiff's complaint is in furtherance of the conspiracy against the Guzewicz family and is designed and calculated solely to undermine the Guzewicz's (sic) family's legal interest in Plaintiff.

45. The conduct of Plaintiff's Board of Directors, officers and counsel constitutes a breach of their respective fiduciary obligations and duties to Plaintiff.

are directed to arbitrate during the week of October 6, 1997.²

1. Counterclaim for Indemnification

Defendant's counterclaim requests indemnification "consistent with all applicable law . . . from Plaintiff, its Directors, shareholders and counsel, for all legal fees and expenses incurred in defending the instant lawsuit." Countercl. ¶ 47. The claim against plaintiff is procedurally defective in that it does not provide an adequate factual and legal basis for determining the nature of the right to relief. Fed. R. Civ. P. 8(a); see Kirschner v. Castello, Civ. No. 91-5985, 1992 WL 191153, at *2 (E.D. Pa. Aug. 3, 1992)(blanket assertions of liability for indemnity are not sufficient); Askanase v. Fatjo, 148 F.R.D. 570, 572 (S.D. Tex. 1993) (indemnity claim must state both a factual and legal basis for entitlement). The claim is also defective as against directors, shareholders, and counsel who have not been joined as parties to this action. Fed. R. Civ. P. 13(h). Nevertheless, it appears that leave to amend would be futile as the indemnity claim has not yet matured, and is not properly brought as a compulsory counterclaim. Fed. R. Civ. P. 13(a); Stahl v. Ohio River Co., 424 F.2d 52, 55 (3d Cir. 1970) (counterclaim must be matured at time responsive pleadings are filed); Vanguard Savings and Loan Ass'n. v. Banks, Civ. No. 93-4627, 1995 WL 628134, at *2

2. Under Local Rule 53.2(3), cases are eligible for compulsory arbitration if the amount in controversy is less than \$100,000, exclusive of interests and costs. Arbitrators have the authority to award greater than \$100,000, which may include punitive damages.

(E.D. Pa. Oct. 25, 1995).³

2. Counterclaim for Breach of Fiduciary Duty

The counterclaim alleges that actions by the board of directors, officers and counsel constitute "an ongoing breach of fiduciary duty to Plaintiff, and a deprivation of Plaintiff's assets, for which Defendant's interest in Plaintiff is being damaged and harmed." Countercl. ¶ 48. This claim must be dismissed since it is directed solely against parties who have not been joined in this action. Fed. R. Civ. P. 13(h); FDIC v. Bathgate II, 27 F.3d 850, 873 (3d Cir. 1994) (counterclaim "may not be directed solely against persons who are not already parties to the original action, but must involve at least one existing party").⁴

3. The counterclaim does not allege whether the indemnity claim is brought under Pennsylvania or Delaware law; however, it appears that under either state's business corporation law, defendant's right to indemnification can not be determined until this case is resolved on the merits. See Stahl, 424 F.2d at 55 (claim for contribution arises only after trial and judgment); Vanguard, 1995 WL 628134, at *2 (counterclaim for indemnification under Pa. Bus. Corp. Law for costs of defending not ripe); Galdi v. Berg, 359 F. Supp. 698, 702 (D. Del. 1973) (indemnification premature prior to determination on the merits); see also Ridder v. Cityfed Fin. Corp., 47 F.3d 85, 87 (3d Cir. 1995) (under Delaware law, difference between a right to receive costs of defense in advance and right to indemnification that may later be established).

4. The counterclaim is also improper because a special injury has not been pleaded, and defendant may not bring a claim for harm to her interest in the corporation in her individual capacity. In re Sunrise Sec. Litig., 916 F.2d 874, 880 (3d Cir. 1990) (shareholder does not have individual cause of action for damages that result from injury to corporation); see Moffatt Enter., Inc. v. Borden, Inc., 807 F.2d 1169, 1177 (3d Cir. 1987) (special injury averred where claim alleged loss of funds in developing corporation and loss of previous employment).

Edmund V. Ludwig, S.J.